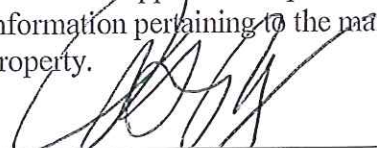


Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2015-00004, to formalize an existing third unit in an existing dwelling, as an extension and alteration of a pre-existing non-conforming use, under Section 9.22 of the Zoning Bylaw, at 33-37 Cottage Street (Map 11D, Parcel 44, R-G Zoning District), with the following conditions:

1. No later than January 1, 2015, any work necessary to comply with the Building Code to be completed. This includes the installation of the second egress and any required fire separation as determined by Inspection Services.
2. The three units shall be used and maintained substantially in accordance with the approved floor plans:
 - a. The main house shall consist of three bedrooms
 - b. The second unit (first floor, rear) shall consist of two bedrooms
 - c. The third unit (second floor, rear) shall consist of one bedroom
 - d. Any changes to the number of bedrooms shall require modification of this Special Permit.
3. The parking shall be in accordance with the approved site plan. There shall be no more than six cars parked on the property on a regular basis.
 - a. The parking area shall be continuously maintained in good condition.
 - b. Each parking space shall be demarked by white paint on the top and face of the blacktop curb.
4. An approved Management Plan shall be in place at all times for this property. For the current owner, the Management Plan shall be as approved by the Board on August 28, 2014.
5. Upon a change in ownership, the new owner shall submit a revised Management Plan for review and approval at a public meeting. Said Management Plan shall contain specific information pertaining to the management of noise, upkeep, and general maintenance of the property.



Mark Parent, Acting Chair
Amherst Zoning Board of Appeals



DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/Owner: Sandra and David Knightly

Date application filed with the Town Clerk:

Nature of request: For a Special Permit to formalize an existing third unit in an existing dwelling, as an extension and alteration of a pre-existing non-conforming use, under Section 9.22 of the Zoning Bylaw

Address: 33-37 Cottage Street (Map 11D, Parcel 44, R-G Zoning District)

Legal notice: Published on August 13, 2014 and August 20, 2014 and mailed to abutters on August 13, 2014

Board members: Mark Parent, Yuri Friman, Pari Riahi,

Staff members: Jeff Bagg, Senior Planner, Rob Morra, Building Commissioner

Submissions:

- Application, filed with the Town Clerk on August 1, 2014
- Timeline, Management Plan, and Parking Plan
- First and second floor plans for second and third unit
- Existing conditions photographs of interior and exterior
- Rental Permit application
- ZBA FY1978-83 with approved plans
- Lease agreement
- Revised first floor plan with laundry room
- South elevation showing new exterior door

Site Visit: August 26, 2014

Mark Parent, Yuri Friman, and Pari Riahi viewed the property situated on the east side of Cottage Street, and the following:

- The existing building containing three units and the exterior of the property containing parking area for six cars.
- The exterior of the side of the building where a new second egress door and stairs would be required.
- The first and second floor of the interior of the third unit to be formalized, containing one bedroom, kitchen, bath and living space.
- The approximate location of the south property line and abutting property in the Limited Business (B-L) Zoning District.

Public Hearing: August 28, 2014

The applicants, Sandra and David Knightly, were accompanied by their contractor, Louis Montgomery. They described that the space in question was used as Ms. Knightly's real estate office until 1999. When the applicant stopped using the office, it was provided to a tenant who used the space as an office for a consulting business until 2008. The space was then converted into an apartment. The apartment has been vacant since July 1, 2014.

The Board discussed the permitting history for the property. In 1978 the applicants received a Special Permit to construct an addition to an existing single family house. The Special Permit allowed the creation of one additional dwelling unit and one home office space. As described in the 1978 written decision, the use was considered under the Use Category for "Row House". The 1978 decision identifies that a modification of the "additional lot" area per dwelling unit was granted. In 1978, the Bylaw required 12,000 square feet of lot for the first unit and 2,500 for additional units. At some point after 1978, that section of the Bylaw was removed, thus making the use a permitted but pre-existing non-conforming use.

The Board discussed the size of the lot as it relates to the current requirements for three units. The property is 12,999 square feet in area. The current Zoning Bylaw would require 17,000 square feet. Based on the Town's GIS, the Board identified three other multifamily properties, two of which are non-conforming with regard to lot area:

- 77 Cottage Street – 3 family with 10,890 sq. ft.
- 58 Cottage Street – 2 family with 13,500 sq. ft.
- 50 Cottage Street – 2 family with 17,360 sq. ft.

The Board discussed the revised floor plans and elevations. The Board noted the applicant's proposal to convert a portion of the first floor to a shared laundry room for the tenants. It was noted that this area would need to be fire separated from the units but was otherwise acceptable to the Board. The addition of the new egress door requires the construction of a landing/platform and step down on the south side of the property, as shown on the elevations.

The Board heard from the following members of the public:

- Alex Hoar, 42 Cottage Street, stated that they live across the street from the property and expressed support for the request noting that the property owners actively manage the property and there have been no issues related to the three units.
- Pamela Rooney, 42 Cottage Street, expressed support for the request and noted that the use of the property creates a good transition between the business and the residential zoning districts.

The Board finds under Section 9.22, the following:

9.22 - The Special Permit Granting Authority authorized to act under the provisions of Section 3.3 of this bylaw may, under a Special Permit, allow a non-conforming use of a building, structure or land to be changed to a specified use not substantially different in character or in its effect on the neighborhood or on property in the vicinity. Said Authority may also authorize, under a Special Permit, a non-conforming use of a building, structure, or land to be extended, or a non-conforming building to be structurally altered, enlarged or reconstructed; provided that the Authority finds that such alteration, enlargement, or reconstruction shall not be substantially more detrimental to the neighborhood than the existing non-conforming use or non-conforming building. The Board finds that formalizing the third unit in the building is not substantially more detrimental to the neighborhood for the following reasons:

- The property is immediately abutting the B-L Zoning District and three units is a reasonable number on this property which acts as a transition from business uses to residential uses.
- The use has existed since 2008 without any known complaints related to parking, noise or other nuisances. The Board noted two letters and testimony in support of the proposal.
- The property owners reside on the adjacent parcel which will enhance the management of the property and will reduce or remove any detrimental impacts.
- To formalize the third unit minimum exterior changes in the form of a new egress door and stairs. These changes will not affect the character or effect of the building on the neighborhood.
- As identified in the Town GIS information, the property is not the only non-conforming property with respect to the number of units and lot area in the vicinity.

The Board finds under Article 7, the following:

7.0000 - *Two (2) parking spaces for each dwelling unit.* The proposal provides six parking spaces which is the minimum number required under the Bylaw. The Board noted that the expected number of tenants is six and therefore the number is sufficient for the use.

7.0001 - *Parking spaces for cars or similar vehicles shall be on a paved surface such as concrete, bituminous asphalt, masonry pavers, oil and stone, gravel, trap rock, or a similar material (see Section 7.101); 7.101- Paving: For the purposes of this bylaw, a paved parking surface shall be considered to be one which has a prepared subgrade and compacted gravel base with a minimum total 12 inch depth, appropriate grading and drainage, and which is surfaced with a minimum 2 inch top coat of concrete, asphalt, masonry pavers, oil and stone, gravel, trap rock, or similar material, as approved or modified by the Town Engineer. To the extent feasible, permeable or porous paving shall be employed in new construction or site renovations or improvements.* The proposal does not include any proposed changes to the site. The existing parking area is constructed of bituminous blacktop and is a suitable surface for parking.

7.104- Dimensions, Marking & Delineation - *Parking areas shall be clearly delineated and shall be provided with a permanent dust-free surface and adequate drainage.* The parking area is delineated by the existence of bituminous blacktop surrounded by some curbing and grass and therefore meets this criterion. There are no changes proposed to the site and there are no known issues related to drainage.

Each parking space shall be at least 9 feet x 18 feet in size, and all parking areas must have adequate access and maneuvering areas. The Zoning Board of Appeals (SP) or the Planning Board (SPR) may allow, upon application, small car parking spaces (8 feet x 16 feet) to be substituted for up to fifty percent of the standard parking spaces. Compact parking spaces shall be designated by clearly visible signs. The Board allows two spaces to be considered compact parking spaces. Those two spaces are in the three car parking area facing east. The proposal provides for adequate maneuverability and the Board does not require any signs.

In all parking areas of five (5) or more parking spaces, individual spaces shall be painted, marked or otherwise delineated in a manner sufficient to visibly identify said spaces. The Board did not require the full length of each space to be painted. Rather, each parking space shall be marked by a white marking on the top of blacktop curb.

7.105 - *Lighting: adequate lighting shall be provided for all parking areas of 5 spaces or more if these areas are to be used at night. All exterior site lighting associated with parking areas shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property and sufficient to reduce a viewer's ability to see.* The Board finds that the existing motion sensor light at the rear of the building and existing egress lighting is adequate for the six parking spaces.

7.112 -Screening: parking areas with 5 or more spaces shall provide effective screening of the parking area from adjacent streets or properties. Such screening may be accomplished by: depressions in grade 3 feet or more; a hedge or wall; or any type of appropriate natural or artificial permanent division. Any required screening barrier shall not be less than 3 feet high. Screening shall not be located to obstruct driver visions so as to impair safety at intersections or driveway entrances or exits. The Board waived the requirement to provide any additional screening citing the location of the property immediately adjacent to a parking lot in the B-L Zoning District and abutting the Amherst Regional High School athletic fields to the east.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - *The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District.*

The location of the property as a transition between the B-L and R-G District make the three units compatible with the other uses in the vicinity.

10.382, 10.383 & 10.385 - *The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.* The three units will not constitute a nuisance given its location adjacent to a business zoning district to the south and Amherst Regional High School to the east. The requirement for an approved Management Plan to be in place at all times, and upon change of ownership, is to ensure that the use reasonably protects abutting property owners.

10.384 and 10.389 - *Adequate and appropriate facilities would be provided for the proper operation of the proposed use; The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water.* The proposal involves certain undetermined upgrades to the fire separation between units to meet the Building Code. Additionally, a second means of egress is required to accommodate the second unit.

10.386 - *The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.* Refer to findings under Article 7. There are no signs associated with this proposal.

10.392 - *The proposal provides adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage.* The Board waived the requirement for a landscaping plan citing that the existing landscaping is adequate to make the use compatible with other residential uses in the vicinity. The Board noted that the removal of the landscaping on the south side for the door will not negatively impact the property.

10.393 - *The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions.* The Board found that the existing lighting conditions are acceptable.

10.398- The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan. As a result of the Rental Permit program, the proposal provides for a more accurate permit for the use of the property as three units. The proposal is in harmony with the Master Plan of providing additional housing near existing services.


Zoning Board Decision

Mr. Parent MOVED to approve the application with conditions. Ms. Riahi seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2015-00004, to formalize an existing third unit in an existing dwelling, as an extension and alteration of a pre-existing non-conforming use, under Section 9.22 of the Zoning Bylaw, at 33-37 Cottage Street (Map 11D, Parcel 44, R-G Zoning-District), with conditions.


MARK PARENT


YURI FRIMAN


PARVRIAHI

FILED THIS 26th day of November, 2014 at 9:39 AM,
in the office of the Amherst Town Clerk Sandra J. Burger

TWENTY-DAY APPEAL period expires, December 16 2014.

NOTICE OF DECISION mailed this 26th day of November, 2014
to the attached list of addresses by Terry L. Byr, for the Board.

CERTIFICATE OF NO APPEAL issued this _____ day of _____, 2014.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2014,
in the Hampshire County Registry of Deeds.

Town of Amherst Abutter List

| <u>Parcel_ID</u> | <u>Parcel_Address</u> | <u>Owner1</u> | <u>Owner2</u> | <u>Address</u> | <u>City/Zip</u> |
|------------------|------------------------|------------------------------------|-------------------|--------------------------------|------------------------------|
| 11D-82 | COTTAGE ST | AMHERST PELHAM REG SCHOOL DIST | | CHESTNUT ST | AMHERST, MA 01002 |
| 11D-42 | 29 COTTAGE ST | W D COWLS INC | | 134 MONTAGUE RD, P.O. BOX 9677 | NORTH AMHERST, MA 01059-9677 |
| 11D-44 | 33-37 COTTAGE ST | KNIGHTLY, SANDRA G | | 41 COTTAGE ST | Amherst, MA 01002 |
| 11D-37 | 36 COTTAGE ST | VIERLING, ELIZABETH | | P.O. BOX 635 | AMHERST, MA 01004-0635 |
| 11D-45 | 41 COTTAGE ST | KNIGHTLY, DAVID R & SANDRA G | | 41 COTTAGE ST | AMHERST, MA 01002 |
| 11D-36 | 42 COTTAGE ST | HOAR, ALEXANDER & ROONEY, PAM | | 42 COTTAGE ST | AMHERST, MA 01002 |
| 11D-34 | 50 COTTAGE ST | DAHILL, BRIDGET | | 50 COTTAGE ST | Amherst, MA 01002 |
| 11D-46 | 51 COTTAGE ST | WEST, EMILY | | 51 COTTAGE ST | AMHERST, MA 01002 |
| 11D-47 | 55 COTTAGE ST | HARRIS, JOEL A & SZNAJDERMAN, TOBI | | 55 COTTAGE ST | AMHERST, MA 01002 |
| 11D-33 | 58 COTTAGE ST | DINES, NICHOLAS & WALTNER, SUSAN K | | P.O. BOX 773 9 NORTH ST | WILLIAMSBURG, MA 01096-0773 |
| 11D-48 | 59 COTTAGE ST | TALBOT, ANDREA & COOPER, DAN | | 59 COTTAGE ST | AMHERST, MA 01002 |
| 11D-49 | 61 COTTAGE ST | ROSS, GARETH F & ET AL | | 61 COTTAGE ST | AMHERST, MA 01002 |
| 11D-259 | EAST PLEASANT ST | AMHERST HOUSING AUTHORITY | | 33 KELLOGG AVE | AMHERST, MA 01002 |
| 11C-3-261 | 87 EAST PLEASANT ST #D | DANIELS, OC BOBBY & SHIRLEY JO | C/O LYNN REYNOLDS | 62 EAST TAYLOR HILL RD | MONTAGUE, MA 01351 |

| <i>Parcel_ID</i> | <i>Parcel_Address</i> | <i>Owner1</i> | <i>Owner2</i> | <i>Address</i> | <i>CityStZip</i> |
|------------------|------------------------|--|---------------------------------------|----------------------------|----------------------------|
| 11C-4-261 | 87 EAST PLEASANT ST #C | HAJIR, TOORAN | | 136 TRELLIS LN | IRVINE, CA 92620-0249 |
| 11C-2-261 | 87 EAST PLEASANT ST #E | JOHNSON, ROY A | | 109 BLACKBERRY LN | AMHERST, MA 01002 |
| 11C-1-261 | 87 EAST PLEASANT ST #F | MORIN, GLENN & EMILY S & SPITKO, ROBERTA | C/O MORIN, GLENN & EMILY, SPITKO, R | 87 EAST PLEASANT ST | AMHERST, MA 010002 |
| 11C-5-261 | 87 EAST PLEASANT ST #B | SCHAPIRA, AGUSTIN & RIBAK, ANITA LICIS | C/O SCHAPIRA, A & RIBAK, A L TRUSTEES | 87 EAST PLEASANT ST UNIT B | AMHERST, MA 01002 |
| 11C-6-261 | 87 EAST PLEASANT ST #A | SUD, DONNA SUNIL & NATHAN | | 172 S MERRIMACK RD | HOLLIS, NH 03049 |
| 11C-7-261 | 95 EAST PLEASANT ST #G | HILLIARD H CONWAY | C/O SAUNDERS, H JAMES & ELLEN S | 76 E SURFSIDE DR | SANTA ROSA BEACH, FL 32459 |
| 11C-8-261 | 97 EAST PLEASANT ST #H | CORLEY, TIMOTHY J | CURTICE, WENDY J | 95H EAST PLEASANT ST | AMHERST, MA 01002 |
| 11D-81 | MATTOON ST | AMHERST PELHAM REG SCHOOL DIST | | 21 MATTOON ST | AMHERST, MA 01002 |
| 11D-40 | 203 TRIANGLE ST | JONES PROPERTIES LTD PARTNERSHIP | | 15A PRAY ST | AMHERST, MA 01002 |
| 11C-265 | 231 TRIANGLE ST | BROWN, JEFFERY B TRUSTEE OF BGB RLTY TRU | | 391 BAY RD | AMHERST, MA 01002 |

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted

To Sandra and David Knightly
Address 41 Cottage Street
City or Town Amherst, MA 01002

Identify Land Affected: 33-37 Cottage Street
(Map 11D, Parcel 44, R-G Zoning District)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

33-37 Cottage Street Amherst
Street City or Town

The record of title standing in the name of
Sandra and David Knightly
Name of Owner

Whose address is 41 Cottage Street Amherst MA 01002
Street City or Town State Zip Code

By a deed duly recorded in the
Hampshire County Registry of Deeds: Book 11313 Page 137
or

Hampshire Registry District of the Land Court, Certificate No. _____,
Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2015-00004
In the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:

(Board of Appeals) Chairman

(Board of Appeals) Clerk

_____ at _____ o'clock and _____ minutes _____.m.
Received and entered with the Register of Deeds in the County of Hampshire
Book _____ Page _____

ATTEST _____
Register of Deeds
Notice to be recorded by Land Owner

**BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Sandra and David Knightly

For A Special Permit to formalize an existing third unit in an existing dwelling, as an extension and alteration of a pre-existing non-conforming use, under Section 9.22 of the Zoning Bylaw

On the premises of 33-37 Cottage Street
At or on Map 11D, Parcel 44, R-G Zoning District

NOTICE of hearing as follows mailed (date) August 13, 2014
to attached list of addresses and published in the Daily Hampshire Gazette
dated August 13, 2014 and August 20, 2014

Hearing date and place August 28, 2014 (Town Hall)

LEGAL NOTICE
The Amherst Zoning Board of Appeals will meet on Thursday, August 28, 2014, at 8:30 P.M. in the Town Room, Town Hall, to conduct the following business:
PUBLIC HEARING:
ZBA FY2015-00002 - Joel Greenbaum - For a Special Permit to extend and alter a pre-existing non-conforming use, and/or, structure, by adding three additional dwelling units to an existing 20 unit building, under Section 9.22 of the Zoning Bylaw, at 85 North Whitney Street (Map 11D, Parcel 183, R-G Zoning District)
ZBA FY2015-00004 - Sandra Knightly - For a Special Permit to formalize an existing third unit in an existing dwelling, as an extension and alteration of a pre-existing non-conforming use, under Section 9.22 of the Zoning Bylaw, at 33-37 Cottage Street (Map 11D-44, R-G Zoning District)
ZBA FY2015-00009 - Michael Ben-Chaim - For a Special Permit to modify conditions of ZBA FY2014-00015 and/or ZBA FY2012-00021 to allow changes to the approved building and site plan including the demolition of an existing shed and changes to the approved siding material, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District)
**ERIC BEAL, CHAIR
AMHERST ZONING
BOARD OF APPEALS
August 13, 2014**
3303740

SITTING BOARD and VOTE TAKEN:

To grant a Special Permit, FY2015-00004, to formalize an existing third unit in an existing dwelling, as an extension and alteration of a pre-existing non-conforming use, under Section 9.22 of the Zoning Bylaw, at 33-37 Cottage Street (Map 11D, Parcel 44, R-G Zoning District), subject to conditions.

Mark Parent – Yes Carolyn Holstein – Yes Pari Riahi – Yes

DECISION: APPROVED with conditions